

Greetings:

The following are comments filed with reference to **MB Docket No. 04-233**.

I am writing as an independent local broadcaster operating two over-the-air AM stations in Albuquerque, New Mexico. My company, Vanguard Media LLC, is operated on a daily basis by my wife and myself, and we employ 15 people in the course of our broadcasting operation.

I have been in radio broadcasting since my high school days in the early 70's, and have been in ownership of radio stations since 1984, when I purchased a failing daytime AM station in the small town of Grants, New Mexico, and moved there to personally operate the station. I wound up owning that AM station for fifteen years, during that time adding two FM stations, one of which was previously off the air in bankruptcy, and the second created from the ground as a new community allotment. My current ownership interests include an FM station in Santa Rosa, New Mexico, which I am transferring to the local Esquibel family there this summer, and a 25% ownership in an FM station in Las Vegas, New Mexico which my partner and I are transferring to the local Baca family there also this summer. I also operate a small daytime AM station in Milan, New Mexico, along with my two Albuquerque AM stations KRKE and KKJY which are valuable local radio services in Albuquerque and, along with my remarkable staff, are my pride and joy.

In this Rule Making, the Commission expresses their general opinion that radio stations are not sufficiently serving their communities with programming responsive to local issues. I differ from that viewpoint, not only with respect to my radio stations, but from my observations of my corporate competitors in the Albuquerque market.

Clear Channel Communications is often singled out as being unresponsive to communities in which they operate radio stations. In Albuquerque, their well-managed group of stations is highly responsive to local issues. Their leading stations regularly address local issues through discussion, guest interviews, the presentation of opinion, and local news. Citadel Communications here presents two dynamic talk-format stations that regularly present a variety of viewpoints on local issues and high-quality local news. Univision well-serves their primarily Spanish-speaking audiences, and American General Media serves our market well with a number of mass-market and niche format stations.

My company, Vanguard Media, has numerous programs on our stations to address a number of community needs, such as Voices, a weekly one-hour program that discusses issues of African-Americans in Albuquerque. We present a two-hour weekly program that addresses the needs of seniors, the disabled and blind. We have a weekly one-hour program hosted by the Mayor of Albuquerque, addressing important local issues and initiatives. We have a one-

hour weekly program hosted by a Medical Doctor addressing our listeners' health concerns. We frequently have interviews in our weekday programs with people and organizations who offer valuable services to the people of Albuquerque, such as homeless shelters and mental health services. We frequently broadcast special programs both from our studios and live in the field from important community events. And, we have had all the candidates for the primary election for U.S. Congress and U.S. Senate come to our stations for a full one-hour interview at no charge so our listeners may become better informed voters. Each of those candidate interviews were broadcast in prime hours, at 9AM on Tuesdays and again at Noon on Saturdays.

While we do our best at Vanguard Media to serve our community and are very proud of our local service, the examples of our responsive local programming are by no means unique to our company in radio in Albuquerque, and I believe you would receive substantially the same statement from nearly any of our worthy competitors if asked about their stations.

Beside a passion for using our valuable Mass Media voices for community good, what drives us as radio station operators to serve out communities well? It just makes good business sense - the better we serve our listeners, the better we are able to compete for their respect and attention in a very crowded media marketplace of which over the air radio is just a part. At our stations, we have what we call our "listener comment line", a telephone number listeners are encouraged to call to record their comments on our programming. This has proven to be a very valuable means of hearing our listeners' input on our stations in a manner that is convenient and non-threatening to a listener.

As a mass media service, it is incumbent upon us to serve as many members of the community as possible. The Commission's proposal to re-establish ascertainment panels would actually dilute a station's service to the many, while having its programming, in a manner, controlled by the few. No matter how many organizations a station receives input from, no matter how many public meetings are held, any effort of such nature will inevitably result in input from a relatively tiny but vocal segment of the population. I believe this is evidenced by the type of input that was received at the Commission's localism meetings. Those few who are passionately against the way broadcasting is currently presented appeared at the meetings, a disproportionate number of them simply anti-Clear Channel. The people not heard from? The vast majority of the public – millions and millions of people who are clearly satisfied with their radio service, as evidenced by the fact that radio is listened to by well over 90 percent of the American population age 12 and up each week. This enormous "silent majority" represents the people we must serve with our radio stations on a daily basis, and if we do not, we fail as businesses. Therefore, I am adamantly opposed to any requirement for formal ascertainment meetings or panels, as such input is inevitably received from the vocal minority. I respectfully submit that the best measure of service to a community would be a radio station's audience ratings.

More listeners = more service. Would an unrated station with ascertainment panels represent a more valuable service to a community than a highly rated station that assertively works to serve the community at large? No.

As to the amount of community-responsive programming a radio station should offer – that should clearly be the sole decision of the licensee. Again, the failure of a radio station to serve its community will surely result in the failure of the business, thereby placing the license of the station in the hands of another operator who may better serve the community with the station. This represents the best of a natural flow of free enterprise, resulting in the best possible community service from each radio station. To require a fixed amount of so-called public service programming from each station would not take into account unique community needs, nor would it account for the differences between radio station's audiences. A talk and issues station could claim 24 hours a day of "public service", whereas a music entertainment station that brings in community leaders to co-host the morning program from time to time could potentially have no claim at all under the proposed guidelines. If the co-hosted music station has five times the listeners (ratings) than the talk station, one could argue that the music station actually presented a more valuable service than the talk station

All of the stations I have ownership interest in broadcast from within their communities of license. This is fine, but does it make us better than a station that broadcasts from outside their community? I believe not. Most radio stations cover people in their licensed community and outside the community as well. I believe we have a responsibility to serve our communities of license, but establishing a requirement to broadcast from within the political boundaries of a community often does not make sense. In 1987 I started a radio station licensed to the community of Los Ranchos de Albuquerque. It was impossible at the time to operate from within that community as local zoning would not permit the establishment of a new commercial enterprise there. I was able to establish the studio and office of that station about five miles away in a commercial area of a nearby community. I strongly believe I served Los Ranchos de Albuquerque well at that time, and while I no longer own that station, its studio is situated outside the community to this day and conducts a valuable service to Los Ranchos as we speak.

As to unattended operation, as I write this letter at 10:30 PM on a Sunday, my two AM stations are operating without a person in attendance, yet we are serving our community with entertainment programming on one station and a talk and issues program on the other. Would a person in attendance at the stations make a difference? Clearly, no. Our EAS equipment functions perfectly for any local emergency, and there is a trained person in attendance at the Citadel radio station we monitor to respond to any calls from authorities or national EAS alerts. The contemplated requirement to have a person in attendance at every radio station at all times is simply specious, and would have no public benefit.

The proposal to allow AM stations to rebroadcast on FM translators is a good one, particularly in rural small markets where an AM station's nighttime signal may not reach very far. This proposal will allow certain AM stations to better serve their audiences without interference to existing FM stations.

Voice-Tracking: We use voice tracking on both my stations, and record those tracks in our own studios. This is a very effective technique for improving the quality of our broadcasts while freeing up our talent for other valuable duties. For example, while the voice-tracked "Voices" African-American program mentioned above is airing, that staff member who creates that unique program is producing the live Senior and Disabled issues program on our other station. This certainly represents no dilution of our community service. Any efforts to regulate voice-tracking are generally suggested by those who may be in a performance union or other similar situation who simply want more "busy-work" jobs created. The radio business already faces significant challenges, as I will discuss later in this document, and cannot absorb the expense of taking technology backward 20 years.

On the subject of Payola, in my 35+ years of being in this industry, I have never seen this done in Albuquerque radio. Anyone who would engage in this ludicrous practice would jeopardize their reputation, business and future for a small return, and I have never seen any operator stupid enough to accept Payola. While it may occur elsewhere from time to time, I cannot imagine that Payola is an issue today worthy of further regulation, as the Commission's Rules and civil and criminal laws on the books fully address such practices.

To me, the license renewal process should be quite simple. If a licensee is able to operate their business in a manner that enables them to broadcast on a consistent basis, within the terms of their license, and to pay their costs of operation, then they must be serving their listeners. If a radio station does not serve its listeners and community, it will fail and the license will transfer to another hopefully more astute and successful operator. I do support the Commission's rule that if a radio station does not broadcast in some form for one year, the license automatically expires.

Comments are requested about LPFM stations and spectrum allocations to accommodate more local broadcasters. I am in favor of reallocating television channels 5 and 6 for additional FM / Digital broadcasting service when those channels are vacated by analog television broadcasters in 2009. LPFM as currently authorized is essentially locked out of most markets due to congestion from full-service stations. I propose the Commission address this issue in a separate Rule Making proceeding, which action could open an opportunity for many local stations.

In this localism proceeding, the Commission seems to forget that over the air radio broadcasting, while the most immediate and a very important component of

electronic media, is not at all alone in the media universe. Much has changed since the rules the Commission is contemplating returning to were eliminated with good cause in the early 80's. Today radio competes with a huge cable and satellite selection of hundreds of radio and television channels, as well as many thousands of internet radio stations. There are many more over the air radio stations, now 52 city grade signals in Albuquerque. There are more over the air television stations. The internet has become the primary source of news and information for many, and at our Albuquerque stations we embrace the Internet through streaming broadcasting of our AM stations. More publications, more electronic media sources, more competition – inherently a good thing! Yet the Commission yearns for a return to the good old days of the 60's and 70', when everything was "just right". To hamstring over the air radio and television with a return to onerous content rules is clearly unconstitutional, patently unfair in today's complex media climate, and would be a disservice to the people of our country. It is important to remember that today, anyone, without any license requirement whatsoever, at any may start an internet radio station at a cost ranging from \$0 to, on the outside, \$1000. I personally know people who have done this and are broadcasting on the internet as this letter is written. Those independent internet radio stations represent a diversity of broadcast voices that over time will dramatically change our media landscape. And, each person listening to such a station is someone who is not listening to one of my over-the-air radio stations. Further, those internet radio stations have no content regulation whatsoever – the ideal of our Constitution's First Amendment.

Please, please, please... I ask that the Commission respect the First Amendment to the Constitution, and allow our amazing and valuable mix of media voices, unique in the world, to thrive, compete, and present all imaginable points of view, without Government intervention. We will all be better for it.

Sincerely,
Vanguard Media LLC

A handwritten signature in black ink, appearing to read "Don Davis". The signature is fluid and cursive, with the first name "Don" and last name "Davis" clearly distinguishable.

Don Davis
1213 San Pedro NE
Albuquerque, NM 87110
(505)899-5029